IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 23751 of 2006(C)

PETITIONER:

K.P. RAVI, S/O.LATE PRABHAKARAN,
AGED 56 YEARS, KAATTUVETTI HOUSE,
CHIRAKKAKAM, VARAPPUZHA.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS:

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1. KONGOORPPILLY FARMERS CO-OPERATIVE
BANK LIMITED NO.3847, KONGORPPILLY,ERNAKULAM DIST.
REP. BY MANAGING DIRECTOR.

2. THE MANAGING DIRECTOR,
K.S.R.T.C. TRANSPORT BHAVAN,THIRUVANANTHAPURAM.

3. THE WORKS MANAGER,
K.S.R.T.C., REGIONAL WORKSHOP, ALUVA.

4. K.R. PURUSHOTHAMAN, S/O. RAMAN,
KUZHIVELIPPADATH HOUSE, KONGORPPILLY,PIN-683 525.

BY ADV. SRI.P.PARAMESWARAN NAIR, SC, KSRTC
SRI.S.B.PREMACHANDRA PRABHU
SRI.K.PRABHAKARAN, SC, K.S.R.T.C.
BY GOVT. PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER DATED 19.8.2005 ISSUED BY THE FIRST RESPONDENT.

EXT.P2 THE TRUE COPY OF THE REPRESENTATION DATED 8.8.2006 SUBMITTED BY THE PETITIONER.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE.

WPC.

J.M. JAMES, J.

W.P.(C) No. 23751 of 2006

Dated this the 1st February, 2007.

J U D G M E N T

The prayers of the writ petitioner are,

i) Issue a Writ of Certiorari or any other appropriate writ, order or direction to quash Ext.P1 issued by the 1st respondent;

ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent not to recover the retirement benefits of the petitioner to satisfy the loan dues of 4th respondent;

iii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent to consider Ext.P2 representation and proceed against the 4th respondent and his assets to realize the arrears of loan availed by him; and

iv) Issue such other reliefs as this Hon'ble Court deems fit and proper to the facts and circumstances of the case.

2. The writ petitioner is a guarantor of the 4th respondent, who secured a loan from the first respondent Bank. The writ petitioner had been working under the 3rd respondent, KSRTC, and he has retired from service on 31.5.2004. Because of the intervention of the first respondent, the pensionary benefits of the writ

petitioner had not so far been supplied by the 3rd respondent. Under Ext.P1, dated 19.8.2005, the first respondent has issued a communication directing the 3rd respondent to deduct an amount of Rs.3,70,217/= from the salary and other benefits due to the writ petitioner, and remit the same to the first respondent Bank. Hence, this writ petition by the petitioner.

3. Ext.P2 was a representation preferred by the writ petitioner before the first respondent. First respondent has heard the writ petitioner, as well as the 4th respondent, and the benefit of one time settlement facility was extended to the 4th respondent, granting instalment facility, after fixing the amount due to it from the 4th respondent. Counsel appearing for the first resondent, however, submitted that despite the extension of the benefit of one time settlement facility, and granting of the instalments, the 4th respondent defaulted the payment of the instalments, after remitting the amount on two occasions.

4. The learned counsel appearing for writ petitioner submits that the 4th respondent is in possession of immovable properties, and the same could be proceeded against.

5. This Court is not inclined to direct the first respondent regarding the manner of proceeding against the debtors. When the 4th respondent is not remitting the amount due to the first respondent, it is the right of the first respondent to proceed against the guarantors as well, including the writ petitioner. As Ext.P2 representation has already been considered and disposed of, the third prayer of the writ petitioner do not arise for consideration. The first and second prayers cannot be granted, in the light of the facts discussed above.

6. At this stage, the learned counsel appearing for the writ petitioner submitted that the writ petitioner may be permitted to file a fresh representation giving the present details of the assets of the 4th respondent. If such a representation is filed, the first respondent shall consider the same, while taking further action on the writ petitioner.

The writ petition is dismissed subject to the above observation.

J.M. JAMES,
JUDGE

nj.